



February 12, 1999

Mr. Marcos Hernandez, Jr.
Hays County District Attorney
Hays County Justice Center
110 E. Martin Luther King
San Marcos, Texas 78666

OR99-0444

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119523.

On August 21, 1998, you sought an open records decision from this office on behalf of the Hays County Sheriff (the "sheriff") regarding an open records request for records pertaining to any calls for service to which the sheriff's officers responded at a particular address in Dripping Springs, Texas. We note at the outset that section 552.306(a) of the Government Code requires the Office of the Attorney General to "promptly render a decision requested under this subchapter." Specifically, section 552.306(a) provides:

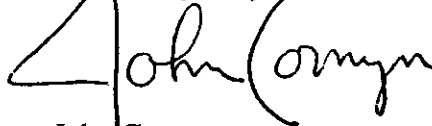
The attorney general shall render the decision not later than the 60th working day after the date the attorney general received the request for a decision. If the attorney general is unable to issue the decision within the 60-day period, the attorney general may extend the period for issuing the decision by an additional 20 working days by informing the governmental body and the requestor, during the original 60-day period, of the reason for the delay.

Our records reflect that, in accordance with section 552.306(a), this office informed both you and the requestor that a ruling would not be issued within the initial 60-day time period. The prior administration of this office, however, subsequently failed to timely issue its ruling regarding this matter, leaving it for my administration. Consequently, we are issuing this ruling at this time.

Attached to this letter ruling, and incorporated herein for purposes of section 552.301 of the Government Code, is an October 12, 1998 draft of the Open Record Division's conclusions regarding the public nature of the information at issue. We note that the sheriff also received two additional open records requests, not addressed in the attached draft ruling, that are similar to the original request. You indicate that the information responsive to these two requests consists of the same information responsive to the request addressed in the attached draft, which concludes that the information at issue is public. We therefore conclude that you must also release the information at issue to the other two requestors.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is stylized, with a large, sweeping "J" and "C".

John Cornyn
Attorney General of Texas

JC/RWP/nc

Ref.: ID# 119523

Enclosures: Submitted documents
October 12, 1998 draft

cc: Mr. Clay Robison
Austin Bureau Chief
Houston Chronicle
1005 Congress Avenue, Suite 770
Austin, Texas 78701
(w/o enclosures)

Mr. Carlos Sanchez
Reporter
Fort Worth Star-Telegram
1005 Congress, Suite 920
Austin, Texas 78701
(w/o enclosures)

Ms. Christi Hoppe
Staff Writer
The Dallas Morning News
Austin Bureau
1005 Congress, Suite 930
Austin, Texas 78701
(w/o enclosures)

October 12, 1998

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119523.

On August 10, 1998, the Hays County Sheriff received a written request for a list of dates, times and nature of calls made to a certain address. The information you submitted as responsive to this request is a Hays County Incident/Offense Report. The Sheriff did not release the information to the requestor and asked this office for an open records ruling on August 25, 1998.

Section 552.301(a) of the Government Code imposes a duty on a governmental body seeking an open records decision to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. In its request for a decision, the governmental body must state the exceptions to disclosure that apply to the requested information. Gov't Code § 552.301(a). When a proper request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

In your August 21, 1998 letter to this office, you state that the Hays County District Attorney's Office "has determined the requested material is exempt from disclosure under the provisions of the Texas Open Records Act" and you request an opinion from this office "concerning the validity" of the request. Although you timely requested an open records decision, you did not claim any exception to disclosure within the ten-day deadline. Gov't Code § 552.301(a). Thus, the information is presumed to be public pursuant to section 552.302 of the Government Code. We must therefore decide whether the Sheriff has established a compelling reason to overcome the presumption of openness.

In correspondence to this office dated September 14, 1998, you state that "it is my belief that the information is excepted from release under Section 552.108 as an indirect manner to obtain a person's criminal history. In addition since no indictment or information resulted from said documents it is our belief that the involved individuals would have a privacy interest."

Section 552.108(a)(2) excepts from disclosure "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." The report relates to an investigation that did not result in

conviction or deferred adjudication. However, you did not raise section 552.108 in a timely manner, nor did you specifically urge the applicability of subsection (a)(2) of section 552.108. Thus, we cannot conclude that section 552.108(a)(2) is applicable. *See* Open Records Decision No. 586 (1990) (predecessor provision of section 552.108 is waived if not timely raised); *see also* Open Records Decision No. 363 (1983) (attorney general has no basis to conclude information is excepted from disclosure if governmental body fails to show how particular exception applies to requested information).

We turn now to your privacy concerns. The release of a compilation of offense reports in which an individual is listed as the suspect implicates that individual's common-law right to privacy. *See United States Dept' of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989), *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, a law enforcement agency must withhold this information under section 552.101, as that individual's privacy right has been implicated. However, here the requestor has not named a particular individual as a suspect. Thus, we cannot conclude that the release of the requested information is a release of an individual's compilation of offense reports so as to implicate that individual's privacy.

Nor are the privacy rights of the individuals involved in the incident otherwise implicated by the release of the information at issue. The public has a right to know basic information about law enforcement in the community. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. Furthermore, the incident is not of the sort that prior decisions of this office have determined to raise an issue of common law privacy. *See, e.g.*, Open Records Decision Nos. 611 (1992), 339 (1982). Thus, unless other compelling reasons exist as to why the information should not be made public, you must release the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,